

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant(s): Richard Richley et al.)
Application No. 10/518,423)
Filed: December 17, 2004) Group Art Unit: 3774
For: DEVICES AND METHODS FOR)
MINIMALLY INVASIVE TREATMENT)
OF DEGENERATED SPINAL DISCS)
Examiner: Alvin J. Stewart) Attorney Docket No. TDYNE-305

FURTHER RESPONSE UNDER RULE 116 AND TO ADVISORY ACTION

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This communication is submitted in response to the Advisory Action dated August 14, 2009 on the above-identified application. Reconsideration of this application is requested.

The Examiner's refusal to enter the Response and Amendment Under Rule 116 filed in the above-identified application is not warranted, and is not justified by the continuation of 3, NOTE in which the Examiner contends that the limitation "solid" does not add any structure limitations to the claims. This contention is without merit.

The Examiner, by focusing on the term "solid" only as denoting a physical state of matter (i.e., solid, liquid or gas) has taken the term "solid" out of the context in which this term is presented in claim 10 and in the specification on page 32, lines 7-8 as well as illustrated in FIGURE 18 of the drawings. Claim 10 characterizes the claimed device as having a cage defined by a solid cylindrical body, i.e., not a hollow cylindrical body. In this context the term "solid" clearly does not refer to the physical state of matter. Rather, the term "solid" denotes a structural feature of the claimed device.

The Examiner's attention is courteously invited to Webster's Third New International Dictionary of the English Language, Unabridged (1993) at page 2169 (copy enclosed). In particular, in the aforementioned dictionary the term "solid" is defined as: